

Ballard Spahr LLP

1675 Broadway, 19th Floor
New York, NY 10019-5820
TEL 212.223.0200
FAX 212.223.1942
www.ballardspahr.com

Wendy R. Stein
Tel: 646.346.8078
Fax: 212.223.1942
steinw@ballardspahr.com

October 2, 2023

VIA ECF

Hon. Sidney H. Stein
United States District Judge for the Southern District of New York
500 Pearl Street
Courtroom 23A
New York, NY 10007

Re: *Carvana, LLC v. International Business Machines Corporation*, Civ. No. 1:23-cv-08616: Plaintiff's Motion to Maintain Seal on Originally Filed Docket Entry 1

Dear Judge Stein,

We represent the Plaintiff in the above-referenced matter.

Pursuant to Rule 21.7 of the ECF Rules & Instructions, Your Honor's Individual Rule 5B and the standards set forth in *Lugosch v. Pyramid Co.*, 435 F.3d 110 (2d Cir. 2006), we move to maintain the seal that has been temporarily placed on the originally filed complaint in this action. The complaint was temporarily sealed because Paragraph 34 contained sensitive information involving an attorney editing remark not intended for public filing. See *Suber v. VVP Servs., LLC*, No. 21-2649, 2023 U.S. App. LEXIS 296, at *15 (2d Cir. Jan. 6, 2023); *Odfjell ASA v. Celanese AG*, 380 F. Supp. 2d 297, 298 n.1 (S.D.N.Y. 2005) (Rakoff, J.).

Plaintiff meets the *Lugosch* standard for sealing ECF No. 1. As to *Lugosch* step one, a complaint is clearly a judicial document filed for the purpose of judicial review in the judicial process. See *Broidy v. Global Risk Advisors LLC*, Civ. No. 19-11861(MKV)(JW), 2023 U.S. Dist. LEXIS 151536, at *7, *10 (S.D.N.Y. Aug. 24, 2023). As to *Lugosch* step two, the information in Paragraph 34 that is removed from public view in the corrected version of the complaint filed at ECF No. 12 will not affect the outcome of this case, and thus the presumption of public access is at the modest end of the spectrum. *Id.* at *11. Further, at step three, a party may overcome the presumption of public access by demonstrating that sealing will further other substantial interests such as personal privacy or preservation of privilege, which is met here by removing the attorney editing remark. See *Lugosch*, 435 F.3d at 125; *Broidy*, 2023 U.S. Dist. LEXIS 151536, at *11-12; *Under Seal v. Under Seal*, 273 F. Supp. 3d 460, 467 (S.D.N.Y. 2017).

Hon. Sidney H. Stein
October 2, 2023
Page 2

Accordingly, we respectfully request that the seal be maintained on ECF No. 1 and that the corrected version of the complaint, which is filed at ECF No. 12, replace ECF No. 1 as the operative complaint in this action. We are available if the Court has any questions and thank the Court for its consideration.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Sidney H. Stein".